UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CC I LIMITED PARTNERSHIP D/B/A COCA COLA PUERTO RICO BOTTLERS
Respondent Employer

AND **Case No. 24-CA-11018, et al**

CARLOS RIVERA, et al
Charging Parties

AND

UNIÓN DE TRONQUISTAS DE PUERTO RICO, LOCAL 901, INTERNATIONAL BROTHERHOOD OF TEAMSTERS
Respondent Union

AND

MIGDALIA MAGRIZ, et al **Case No. 24-CB-2706I**

AND

SILVIA RIVERA, an Individual **Case No. 24-CB-2707**
Charging Parties

EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE DECISION

To the Honorable National Labor Relations Board:

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Comes now, Unión de Tronquistas de Puerto Rico, Local 901, IBT, hereinafter referred to as Local 901, the Union and or Respondent Union, through the undersigned Attorney, and pursuant to NLRB's Rules and Regulations Section 102.42 files it's Exceptions to the Administrative Law Judge Decision in the above referenced matter.[1]

I. Local 901 excepts to the Administrative Law Judge[2] failure to find that the National Labor Relations Board lacks jurisdiction against Local 901over the issues contained in the complaint.[3]

II. Local 901 excepts to the ALJ finding that the Strike Held on October 20 to 22 was caused by the unfair labor practice of Respondent Employer.[4]

III. Local 901 excepts to the ALJ intimation that Local 901 knew on October 14 the name of the shop stewards and members from other Employer's, other than Respondent's Employer, who had attended the October 12 meeting and later in October 2008 who had attended the October 20-22 strike.[5]

IV. Local 901 excepts to the ALJ finding that the actions imposed on Magriz, Quiara and Rivera did not violate the Court imposed "Broad Order".[6]

V. Local 901 excepts to the ALJ's intimation that Magriz, Quiara and Rivera were present when the employees read the "Broad Order" on October 19 and 20.[7]

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[1] Hereinafter references to the Administrative Law Judge will be made as ALJ; references to the Administrative Law Judge Decision will be made as ALJD followed by the page and line number.

[2] Hereinafter references to the Administrative Law Judge will be made as ALJ.
[3] Administrative Law Judge Decision page 28, lines 20-46.
[4] ALJD page 28 lines 48-53 and page 29 lines 1-4.
[5] ALJD page 29, lines13-16.
[6] ALJD page 29, lines 22-23.
[7] ALJD page 29, lines 23-26.

VI. Local 901 excepts to the ALJ finding that Local 901 knew that the "Broad Order" is directed to only the Union "leadership".[8]

VII. Local 901 excepts to the ALJ finding that when Local 901 imposed the disciplinary actions on Magriz, Quiara and Rivera it knew that no violence had occurred.[9]

VIII. Local 901 excepts to the ALJ finding that the internal union charges against the three named individuals were brought in part because of their participation in the internal union election.[10]

IX. Local 901 excepts to the ALJ failure to find that the actions incurred by the three named individuals violated Local 901' By Laws and its International Constitution.[11]

X. Local 901 excepts to the ALJ recommendation that it rescinds the fines it imposed on the three named individuals and reinstate them to full membership, including the shop stewards position.[12]

Respectfully submitted, this June 10th, 2010

Antonio. F. Santos

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[8] ALJD page 29, lines 28-30.
[9] ALJD page 29, lines 32-34.
[10] ALJD page 29, lines 36-39.
[11] ALJD page 29, line 41-43.
[12] ALJD page 29, lines45-49.

CERTIFICATE OF SERVICE

I hereby certify that the "EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE DECISION" has been sent via UPS to the parties below, except José Adrián López-Pacheco and Miguel A. Colón-Torres who have been served via Certified Mail:

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Dated at San Juan, Puerto Rico, this 10th day of June, 2010.

Antonio F. Santos

UNITED STATES OF AMERICA
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CC I LIMITED PARTNERSHIP D/B/A
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AND

MIGDALIA MAGRIZ, et al **Case No. 24-CB-2706I**

AND

SILVIA RIVERA, an Individual **Case No. 24-CB-2707**
Charging Parties

BRIEF OF UNION DE TRONQUISTAS DE PUERTO RICO, LOCAL 901, IBT IN SUPPORT OF EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE DECISION

To the Honorable National Labor Relations Board:

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TABLE OF CASES

TABLE OF CONTENT

Comes now, Unión de Tronquistas de Puerto Rico, Local 901, IBT, hereinafter referred to as Local 901, the Union and or Respondent Union, through the undersigned Attorney, and pursuant to NLRB's Rules and Regulations Section 102.42 files it's Brief in Support of Exceptions[1] to the Administrative Law Judge Decision in the above referenced matter.[2]

I. The Charges and Complaint Allegations

A. Background

On July 31, 2009,[3] Migdalia Magriz, on behalf of herself and Maritza Quiara, both employees of Crowley Liner Services, Inc, filed charge 24-CB-2706 alleging that Local 901 had violated their Section 7 rights by expelling them from Local 901 and fining them $10,000 because of their participation in the internal affairs of Local 901. On the same date Silvia Rivera, an employee of Pepsi Cola filed charge 24-CB-2707 making similar allegations.

On September 2, both charges were amended to include that the actions taken by Local 901 against the above named individuals were because the employees engaged in protected concerted activity and/or supported employees of other employers engaged in protected concerted activity.

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[1] The exceptions were filed today as a separate document pursuant to Section 102.46 of the Board's Rules and Regulations.

[2] Hereinafter references to the Administrative Law Judge will be made as ALJ; references to the Administrative Law Judge Decision will be made as ALJD followed by the page and line number; references to the Official Transcripts will be made as OT followed by the page number; references to Joint Exhibits, General Counsel Exhibits, Union Exhibits, Employer Exhibits and Charging Parties exhibits will be made as J Exh., GC Exh., U Exh., E Exh., and CP Exh., respectively.

[3] All dates hereinafter are for 2009 unless otherwise stated.

On October 30, the Regional Director for Region 24 of the National Labor Relations Board, NLRB, issued a Consolidated Amended Complaint against Local 901 containing allegations related to the above described charges and other charges that had been filed against Local 901 by other individuals. All other charges and Complaint allegations were settled before or during the hearing. The only remaining allegations for consideration by the National Labor Relations Board are the ones mentioned below.[4]

In essence paragraph 15 (a) alleges that on January 9, Local 901 threatened Maritza Quiara, Migdalia Magriz and Silvia Rivera, herein collectively called the Charging Parties, with discipline by issuing internal union charges against them because they were present at/ or participated in a meeting held on October 12, 2008 by employees of CC1 Limited Partnership d/b/a Coca Cola Puerto Rico Bottlers, hereinafter referred to as, indistinctively as CC1, Coca Cola, the Employer, and/or Respondent Employer, because they supported and or participated in a strike held from October 20 to 22, 2008 by CC1 employees.[5]

Paragraph 15(b) alleges that on March 10, Local 901 expelled the Charging Parties from their union membership and imposed each a $10,000 fine.

Paragraph 15 (c) alleges that Local 901 engaged in the above conduct because the three employees attended a meeting held on October 12 and supported and /or participated in the strike held from October 20 to 22, 2008.

[4] See ALJD at page 5, lines 7-13, ft. 5.
[5] Complaint allegation 15 (a) was dismissed by the ALJ because it is outside the 10 (b) period. See ALJD at page 29, lines 45-49, ft. 42.

B. Complaint allegation 15 (b)[6]

As stated above Complaint allegation 15(b) only charged Local 901 with expelling the parties from union membership and imposing a $10,000 fine. There is no allegation regarding the expelling of the charging parties from their stewards position.[7] Thus, the ALJ did not have under his consideration the appropriateness of this sanction, and it is out of the scope of his jurisdiction to rule on this matter. Please note that at no time before, during or after the hearing the General Counsel requested to amend the complaint to allege that the removal of the charging parties from their steward position was a violation of the Act. Notwithstanding the above, the ALJ recommends that in the event the Board finds that Local 901 violated the Act, it order Local 901 to reinstate the charging parties to their steward's position.[8] Local 901 respectfully requests that in the event the Honorable Board finds that Local 901 violated the Act it do not order Local 901 to reinstate the charging parties to their steward's position as this is outside the scope of the complaint and outside the Board's jurisdiction.

II. The Facts

A. The Bargaining Relationship

Respondent Employer and Local 901 have had a bargaining relationship since 2003. Said relationship has been embodied in successive collective bargaining agreements[9],

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[6] Discussion of Exception XI. Recommendation of the ALJ to reinstate the charging parties to their steward positions.

[7] Exception Number X.

[8] ALJD page 29, lines 45-49.

[9] References to the collective bargaining agreement will be made as cba.

the most recent one signed on February 2. The prior cba expired July 1, 2008,[10] and it was extended to July 31. Thereafter, and, until February 2, 2009, the parties operated on the basis of adhere to the terms and conditions of the expired agreement.[11]

B. The September 9 events[12]

On September 9, after the conclusion of a bargaining meeting, then Local 901 business agent, José Adrian Lopez went to Respondent Employer's plant to speak to the third shift employees about the status of the negotiations. Lopez had previously asked Human Resources Director, Lourdes Ayala for permission to go to the plant and she had denied him permission. Nevertheless, Lopez went to the plant and arrived around 8:30 pm. What ensues thereafter was a work stoppage by all the second and third shift employees which lasted approximately two hours.[13] As a result of the work stoppage, the ALJ found, that four Union shop stewards had incurred in acts which warranted their suspension and later dismissal from employment.[14] The ALJ found that shop steward Miguel Colón did not incurred in any acts which warranted his suspension and later dismissal.[15]

According to the ALJD, Lopez and the other shop stewards, except Colón, arrived at the plant at 8:30 pm. According to the ALJD and Colón's testimony, he arrived at sometime between 8:40 and 8:45 pm and remained at the plant until 9:20

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[10] All dates hereinafter are for 2008, unless otherwise stated.

[11] ALJD page 6, lines 31-34.

[12] A detailed description of what transpired on September 9 can be found on ALJD pages 7 to 11 and the discussion on pages 11 to 14.

[13] ALJD page 12, lines 50-51, ft. 20

[14] On September 10, 2008 the five shop stewards were suspended and later on October 10, 2008 were terminated.

[15] Exception II, the strike held on October 20 to 22 was caused by the unfair labor practices of the Employer. ALJD pages 13, lines 44-51 to 14, lines 1-37.

pm.[16] A review of the events as described by the ALJD clearly shows that at the time Colón arrived at the plant the work stoppage was commencing to take place and that as a result Colón must have actively participated, as the other shop stewards did, in instigating employees to stop working, and as Respondent's Employer witnesses testified.[17] In this regard, please note that Lopez arrived at 8:30 pm at the gate. From there he drove his car to the parking lot, got out; went to the cafeteria and started to speak to the employees present, while doing so he got into a shouting match with Victor Colón, Operations Process Leader, waits until Victor Colón leaves to walk around the plant with the other shop stewards who asked the employees to stop working. Lopez admitted that after all these events he arrived at the convention area at 9:00 pm.[18] certainly, this time frame places the work stoppage commencing well beyond the time Miguel Colón arrived at the plant at 8:40 pm. and makes his version that the employees were already at the convection area unbelievable. Thus, contrary to the ALJs finding, the preponderance of the evidence shows that supervisor Armando Troche testimony is more credible than that of Miguel Colón. In this regard, Armando Troche testified that he saw Miguel Colón ordering employees to stop working. Consequently, the Board should find that the suspension and later termination of Miguel Colón was justified. Moreover, even if Miguel Colón did to specifically request employees to stop working it is clear he made no attempts to have the employees return to work, a duty he had under terms and conditions of the collective bargaining agreement. In this regard, the ALJ found that the other four shop stewards were correctly terminated by the Employer,

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[16] ALJD page 10 lines 19-34.

[17] In this regard Armando Troche testified that he saw Miguel Colón when he arrived at the plant, and observed Colón requesting employees to stop working. OT page 883, line 10-25.

[18] ALJD page 9 lines 48-51, ft. 13.

among other things, because they violated Articles XII and XIII.[19] Consequently, since Miguel Colon incurred in similar violations it should be found that he too was correctly terminated, and that the strike that ensue on October 20 to 22 was an illegal strike, and not an unfair labor practice strike.

In the alternative, the Board should find that the Union had good cause to belief that Miguel Colón actively participated in the events of September 9 and that his later suspension and termination by the Employer were justified. Consequently, the Union had good cause to belief that the strike that took place on October 20-22 was unlawful.

C. The October Meetings and Strike

On October 9 Local 901 officials went to the Coca Cola plant to distribute a flyer convening a meeting of all Coca Cola employees for October 12 at the Union Offices. When they arrived at the plant they found that Miguel Colon and the other Union stewards that were terminated by the Employer were also distributing a flyer for a meeting on October 12 to be held at a different location. Ángel Vázquez, a Local 901 business agent and Alexis Rodriguez, Union President approached Miguel Colon and told him not to divide the membership by authorizing a strike vote.[20] Nevertheless, Miguel Colon ignored the Union's President request. The purpose of the meeting convoked by the stewards was to have the CC1 continue bargaining with the five delegates[21] and to authorize a strike vote.

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[19] ALJD page 13 lines 11-13. "Moreover, these four Shop Stewards did not instruct unit employees not to leave their work stations nor did they urge them to return."

[20] OT page 285.

[21] OT page 280.

On October 12 the shop stewards held a meeting with approximately fifty Coca Cola employees.[22] In attendance were also Rivera and Magriz.[23] No union officer attended the meeting.[24] At the meeting the employees authorized a strike vote at Respondent's Employer unless the Employer agreed not to file unfair labor practice charges against Local 901, reinstated the five shop stewards and reconvened negotiations for a successor cba.[25] That same day, October 12, Local 901 held a separate meeting at the Union's offices to select a new bargaining committee.[26]

On October 14, German Vazquez sent a letter to Lourdes Ayala informing her that Jorge Ramos had been named acting shop steward.[27] That same day Miguel Colón faxed a list of Respondent's employees in attendance at the shop steward meeting of October 12. Although the ALJ intimates that Local 901 knew as early as October 14 the names of all non-Respondent Employer's employees who attended the steward meeting of October 12, there is no record evidence to that effect.[28] The record only reflects that the list faxed to Local 901 contained only unit employees' names. The stipulated evidence shows that except for the three charging parties and Jose Grajales, an employee of Crowley Liner services, the Union did not have any knowledge of those who attended the October 12 meeting prior to March 2009.[29]

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[22] OT page 252-253.
[23] ALJD page 25, lines 5-9.
[24] OT page 253.
[25] ALJD page 16, lines 12-18.
[26] OT page 344.
[27] Joint Exh.15.
[28] Exception Number III.
[29] GC Exh 34, stipulation 46.

On October 19, the steward committee held another meeting at Miguel Colon's home.[30] There were from 30 to 40 Coca Cola employees present. There was no Local 901 representative present at the meeting.[31] It was at this meeting that the steward committee decided to implement a strike vote, and discussed the strategy for the strike that was going to commence the next day.[32] At this meeting Charlie (Carlos) Rivera[33] informed the persons present about the Broad Order against Local 901 and that it had to be read the next day to the striking employees.[34] There is no record evidence that any of the charging parties were present at this meeting. Thus, the ALJ's intimation that they were present when the Broad Order was read is no supported by any evidence.[35]

The next day, October 20, CC1 employees went on strike. During the strike, which lasted until October 22 Quiara, Magriz and Rivera were present.[36] According to Miguel Colon one of the purposes of the strike was to have CC1 negotiate with the steward committee.[37] Before the strike commenced the shop stewards read the "Broad Order" to the unit employees. Contrary to the ALJ's intimation that the charging parties were present when the "Broad Order" was read,[38] there is no record evidence to substantiate said insinuation.

On October 20, Atty. Marta Masferer, Counsel for CC1, called and faxed a letter to German Vazquez informing him that an illegal strike was taking place at the

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[30] OT page429.
[31] OT page 430.
[32] OT page 421, 429.
[33] At all times material to the events herein there are various Carlos Rivera employed by Coca Cola. This event refers to Carlos Rivera former union steward.
[34] OT page 431.
[35] Exception number VI.
[36] OT page 434.
[37] OT page 280
[38] Exception number VI.

Employers facility instigated by the union steward committee and that said actions were contrary to their recent discussions regarding the resumption of negotiations where Vazquez had assured her that no strike was going to take place.[39] Additionally, and contrary to the ALJ's assertion, the letter informed the Union that strike misconduct was taking place by blocking the entrance to the Respondent's Employer facility.[40] Moreover, through all the proceedings, including the investigation, answer to complaint and hearing, Respondent Employer has maintained that strike misconduct did occur during the strike.[41] Thus, the Union had reasons to be afraid that the "Broad Order" was violated by the Charging Parties or at least in their presence. That same day, Vazquez replied by fax.[42] In said fax Vazquez informed the Employer that the Union had not authorized the strike and that the presence of Union members in said strike was in violation of Union Statutes. Finally, the letter informed the Employer that the Union was going to take action against those who participated in the strike.

Upon receiving said letter on October 20, CC1 made sufficient copies of it, and had it distribute among the persons present at the strike.[43]

On October 22, Movimiento Solidario Sindical, a labor organization for which José Adrian López later went to work, filed a Petition for representation in the NLRB, Region 24 for the CC1 employees.[44]

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[39] Joint Exh. 18.
[40] Exception number VII.
[41] GC Exh. 1, xxxxxx, answer to complaint, affirmative defenses 58-62.
[42] Joint Exh. 19
[43] OT page 959, 970.
[44] Joint Exh. 23

On October 27, Atty. Maza faxed a letter to the Vazquez accusing the Union of supporting the strike, because Union members not employed by Coca Cola had participated in the strike. The letter was accompanied with several photos of those CC1 believe were the Union members.[45]

On October 29, Vazquez replied to Atty. Maza informing him that the Union was going to conduct an investigation on the matter.[46]

D. The Charges against Quiara, Magriz and Rivera

As a result of the investigation conducted by the Union, on January 9, 2009,[47] and pursuant to the Union's By Laws and the International's Constitution charges were filed against Quiara, Magriz and Rivera for violating the Union's By Laws and the International's Constitution by participating in the October 20-22 strike at Coca Cola.[48]

On January 12, Vazquez notified the Charging Parties that charges had been filed against them for their participation in the strike and informed them that a hearing was going to be scheduled.[49]

The hearings of the three employees were held on February 12, 13 and 14. The Charging Parties did not show up at their hearings.[50] Consequently, the Union's Board of Directors proceeded to hear the evidence against them. During the hearings

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[45] Joint Exh. 20
[46] Joint Exh 21.
[47] All dates hereinafter are for 2009, unless otherwise stated.
[48] GC Exh. 19-20.
[49] U Exh. 1
[50] GC Exh 34, item 14.

testimony, affidavits and documentary evidence was presented to support the charges.[51]

On March 10, the Union's Board of Directors issued a detailed Decision describing the testimonial and documentary evidence presented at the hearings and explaining the disposition of the By Laws and the International's Constitution that the Charging Parties had violated as stewards. Among, the violations incurred by the Charging parties to the Union's By Laws were violations to various Sections of Article XXI Section 21. 01. In these regard they were found to have violated said Section by calling a strike or participating in the same, which also violated the "Broad Order"; failing to inform about the assembly where the call to strike was made and participating in the same; incurring in conduct which violated the "Broad Order"; violating the oath of loyalty to the Union; violating the oath of office as stewards; disloyalty to the Union; participating in activities that give a bad name to the Union; disobedience to the lawful rules of the Union and the International Constitution; and, incurring in acts considered inconsistent with their duties, obligations and loyalty as member to the Union. As a result, of the findings the Board of Directors decided to remove the three members from their position as stewards, expelled them from the Union for six (6) years and fined them $10,000.[52]

[51] U Exh. 11, 12, 13 and 14.
[52] GC Exh. 27

Pursuant to the International Constitution, on March 23, the Charging Parties appealed the March 10 decision to the International Brotherhood of Teamster General Secretary Treasurer.[53]

On April 27, James P Hoffa, General Secretary Treasurer of the IBT denied the Charging Parties appeal based on their failure to appear at the hearing held by the Union and having placed at risk the Union for possible lawsuits a charges before the NLRB.

III. Discussion

A. Board's Lack of Jurisdiction[54]

At the outset it should be noted that this is not a case of a union imposing disciplinary measures on its members for their participation in a protected activity.

This case is really about the Union enforcing its By Laws and Constitution on Union stewards that actively participated in strike preparation and activity of another employer than their own, jeopardizing the financial stability of the Union by exposing it to considerable fines and violations of a Court Order from the United States Court of Appeals for the First Circuit in **NLRB v. Union de Tronquistas de Puerto Rico, Local 901, IBT**, entered on September 10, 1991.[55]

It is established Board Law that the NLRB does not have jurisdiction in matters relating to the relationship of a union and its stewards. Likewise, any other actions imposed on the stewards for violating the By Laws and Constitution that has no impact on their terms and conditions of employment with Crowley Liner Service and or Pepsi

[53] GC Exh. 30.
[54] Exception Number I
[55] JExh. 10

Cola is out of the scope of the NLRB jurisdiction.[56] That is why the Union specifically informed each of their respective employers that it was not going to request the implementation of the union security clause or dues check off of their respective collective bargaining agreements.

Local 901 submits that the NLRB has no jurisdiction over the subject matter, as what the General Counsel is challenging is an internal Union discipline for violations to the Union's By Laws and the International's Constitution, violations that interfered with the Broad Order issued by the United States Court of Appeals for the First Circuit Court issued against Local 901, and of which the three employees had knowledge.

Section 8 (b) (1) (A) is limited by a proviso granting unions the right "to prescribe rules with respect to the acquisition or retention of membership in the union". This proviso has been interpreted as giving unions broad authority to promulgate and enforce rules regulating internal affairs, even though such rules may "restrain or coerce" union members in the exercise of their Section 7 rights. **NLRB v. Allis-Chalmers Manufacturing Co.,** 388 U.S. 175 (1967). Thus, while the NLRB has authority to review the reasonableness of union rules affecting employment status, it does not have power to test the reasonableness of rules affecting membership status, including fines. **NLRB v Boeing Co.,** 412 U.S. 67 (1973).

The Supreme Court has held that unions do not violate Section 8 (b) (1) (A) as long as: the rules were adopted properly; the application of the rule reflects a legitimate union interest; does not contravene a policy of the National Labor Relations Act; and is

[56] Although the General Counsel argues that the seniority rights of the employees have been affected, the truth of the matter is that what was affected was the seniority rights in case of lay off, as a result of the privilege of super seniority for said purpose as steward, which has not occurred.

reasonably enforced against union members who are free to leave the union and escape the rule. **Scofield v. NLRB,** 394 U.S. 423, 430 (1969).

In the instant case the evidence is clear that Local 901 sanctions against the three employees had a legitimate business reason based on valid internal By Laws, Constitution and a Broad Order issued by the United States Circuit Court for the First Circuit that regulates the participation of Local 901 officers, representative and agents at any strike. To argue that the Broad Order does not apply to unfair labor practice strikes or to cases where the Union did not approve the strike, and disavowed it, as the ALJ found,[57] will be tantamount to allowing union officers, representatives and agents an escape route to contravene the purpose of the Broad Order, by engaging in the conduct prohibited by the Broad Order in those types of cases.

In this regard the Broad Order among other dispositions states:

It is further ordered that the Union, its officers, agents and representatives ...

"(k) Refraining from authorizing or permitting picketing by any representative, agents or pickets of the Union unless and until the Union has conferred with the aforesaid representatives, agents or pickets and has taken appropriate steps to assure that the manner of the proposed picketing will be lawful and permissible under the Court's judgment and contempt adjudications;

(l) In the case of any future authorized picketing, strike, or other strike related-activity, designating: one or more officers or agents of the Union to be responsible for ensuring, on behalf of the Union, that such action is carried out lawfully and within the terms of the Court's orders, and empowering all such responsible persons to ensure, on behalf of the Union, the such action is carried out lawfully and within the terms of the Court's orders;

(n) At the outset of any future picketing by or on behalf of the Union or under its auspices, conducting a meeting or meetings, presided over by its principal officer or a designated business representative, and attended by all pickets at which each picket shall be instructed in their obligations under the Court's judgment and contempt adjudications...

(q) In the event that conduct prohibited by the Court's judgment, adjudications or Section 8 (b) (1) (A) occurs, promptly taking all appropriate action to halt such conduct and removing any responsible officer or agent from the picket line, revoking his/her

[57] Exception number V.

strike benefits, and seeking the imposition of reasonable sanctions under the Union's governing rules;" (our emphasis).

The evidence clearly shows that CC1 accused the Union of violating the Broad Order, even when the Union had not approved, and in fact, had disavowed the strike. The Employer understood that since there had been Union stewards from other shops supporting the strike, the Union was indirectly supporting it, including the alleged violence that took place during the strike. Had any of the Charging Parties incurred in any acts of violence or conduct in violation of the Broad Order, charges may have been brought against the Union. The ALJ found that at the time the disciplinary actions were imposed the Union knew there had not been any strike misconduct. Said finding is incorrect.[58] As previously discussed, at all times Respondent Employer has maintained that there had been violence during the strike. Thus, the Union had good reason to belief that the actions of its stewards violated the "Broad Order". To argue, like the ALJ does that since he found that no violence or conduct in violation of the Court Order occurred, the Union had no reason to impose sanctions on the Charging Parties, would be tantamount of finding that in future similar cases the Union would not have an obligation to comply with Section (q) of the Broad Order until an employer proves in court that there has been some misconduct. Local 901 submits that this is not the message the Board and the Court wants to send to the Union's stewards, officers and members. Moreover, as stated previously, the Union had good cause to belief that the strike was unlawful, as the five shop stewards were apparently correctly terminated by the Employer and that strike misconduct had taken place.

[58] Exceptions number IV and VII.

The evidence is also clear that the disciplinary actions imposed on the Charging Parties were limited to their relationship with Local 901 and only because of their position as Union stewards, and at no time they affected their employment status with their respective employers. Contrary to the ALJ findings the charges were not brought because of their participation in the internal Union election.[59] The evidence clearly shows that of all non-Respondent employees that participated in either the October 12 meeting and or the strike, the charging parties were the only ones to have copies of the Union" By Laws and International Constitution and had full knowledge of the Broad Order.[60] Moreover, the evidence shows that after the Union learned of other Union members' participation in the strike, it filed similar charges against them.[61]

The Supreme Court has held that Section 8 (b) (1) (A) provides only a limited prohibition relating to "union tactics involving violence, intimidation, and reprisals or threats thereof." **Labor Board v. Drivers Local Union, 362 U.S.274, at 290 (1960)** Thus, the ALJ standard that the sanctions imposed on the Charging Parties were disparate, which they were not, is not the proper standard for the alleged violations. As a matter of fact, there is no evidence that the sanctions imposed involved any violence, intimidation, reprisals or threats.

In Local 901 By Laws, the International Constitution, and the Broad Order, Union stewards are held to a higher degree of responsibility than regular members as they are agents of the Union. In **Teamsters Local 866,** 354 NLRB No. 52 (2009) the Board held that union stewards are considered agents of their unions. See also, **Electrical Workers, Local 45,** 345 NLRB 7 (2005). Even though the ALJ found that the Broad

[59] Exception number VIII.
[60] GC Exh. 34, stipulation 34.
[61] ALJD page 27, lines 44-48.

Order does not apply to the Union stewards, at the time it imposed the disciplinary actions, it arguably had reason to belief that they were accountable for the Broad Order.[62] It is now for the first time that the Union legally knows that the Broad Order does not apply to the Union stewards. The finding of the ALJ that the Union's By Laws at section 18.08 state that shop stewards are not agents of the Union is misplaced. Said section refers to committees and shop stewards at the International Union's convection.[63] The isolated reading of said section can't be construed to contravene the whole document of the Union's By Laws and much less the Order of the Court. In these regard, Section 20.04, Articles XXIV, XXVI, XXVII and XXXIII clearly show that Union stewards are held to a higher degree of responsibility and loyalty to the Union.

The Union has a greater responsibility in enforcing its rule on their stewards. More so, Local 901 who has a permanent Broad Order imposing severe restrictions to any strike activity that Local 901, its officers, representatives or agents engage in. Those restrictions were not design for unlawful strikes as the ALJ finds by implying that if the strike was lawful the Broad Order does not apply, they were designed precisely for both lawful and unlawful strikes. As will be discussed later, Local 901 submits that the strike held October 20 was unlawful. However, if it is finally determined that the strike was lawful, the Broad Order will apply as well. Consequently, Local 901 has a legitimate reason to impose disciplinary actions to stewards of other employers than those of CC1 that violated the By Laws, the International Constitution and the Broad Order,[64] and the NLRB is barred with interfering with the actions taken by Local 901

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[62] Exception number VI.

[63] R U Exh. 9 (b) page 33-34.

[64] Joint Exh. 10 (a) Order item (q) states: "In the event that conduct prohibited by the Court's judgment, adjudications of Section 8(b) (1) (A) occurs, promptly taking all appropriate action to halt such conduct and

against the Charging Parties. Moreover, the actions imposed, as stated previously, have not affected their employment status or their terms and conditions of employment with their respective employers.[65]

In **Office & Professional Employees Local 251 (Sandia National Laboratories),** 331 NLRB 1417 (2000) the Board held that Section 8(b) (1) (A) does not proscribe wholly intra union conduct and discipline as long as it does not affect the relationship of the members with their respective employers. In said case the Board rejected the application of 8(b) (1) (A) conduct to cases related to violations of the Labor Management Relations and Disclosure Act. Please note that in **Sandia,** supra. the disciplinary actions taken by the Union were similar to the ones here; e.g. removal as stewards and expulsion from the union. In **Sandia,** supra, at page 1418 the Board held "we find that Section 8 (b) (1) (A)'s proper scope, in union discipline cases is to proscribe union conduct against union members that impacts on the employment relationship, impairs access to the Board's processes, pertains to unacceptable methods of union coercion, such as physical violence in organizational or strike contexts, or otherwise impairs policies imbedded in the Act." In that case the Board further held: "what is critical significance in our judgment is that the only sanctions visited on the Charging Parties by the victorious intra union faction were internal union sanctions, such as removal from union office and suspension or expulsion from union membership. The relationship between the Charging Parties and their Employer,

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removing any responsible officer or agent from the picket line, revoking his/her strike benefits, and seeking the imposition of reasonable sanctions under the union's governing rules;"

[65] Please note that immediately after Local 901 imposed the sanctions against the three stewards it notified their respective employers that it was not going to seek enforcement of the respective union security clauses. U Exh. 4 and 5 and GC Exh. 34, item 32. Furthermore, to the present Local 901 has not requested payment of the fines imposed on the three individuals. GC Exhibit 34, item 31.

Sandia, was wholly unaffected by the discipline. Nor are policies specific to the National Labor Relations Act implicated by the union discipline at issue." See also **Painters Local 466 (Skidmore Coll.),** 332 NLRB 445 (2000); and **Teamsters Local 170 (Leaseway Motor Car Transp. Co.),** 333 NLRB 1290 (2001).

In the instant case, none of the sanctions imposed by Local 901 on the three individuals affect their employment status with their respective employers.[66] The removal as shop steward is a privilege employees enjoy through the Union. The relationship between stewards and the Union is govern by the dispositions in the Union's By Laws and Constitution and thus, is not a term and condition of which the employer has control off. In Sandia, supra, at page 1424 the Board said referring to Section 8 (b) (1) (A): "that section was not enacted to regulate the relationship between unions and their members unless there was some nexus with the employer-employee relationship and a violation of the rights and obligations of employees under the Act."

In **Steelworkers Local 9292 (Allied Signal Technical Servs. Corp.),** 336 NLRB 52 (2001), the Board held that "even assuming that union's action had an impact on member's relationship with his employer," union suspension of member did not violate the Act "where union's legitimate and substantial interest in maintaining control over grievance process and in policing its internal affairs...outweighs members' arguably impacted Section 7 rights." Please note that in both **Steelworkers Local 9292,** supra and **Service Employees Local 254 (Brandeis University),** 332 NLRB 1118 (2000), involved the removal of shop stewards. In the latter case, the Board held that the removal of the shop steward had no impact upon the member's relationship with his employer.

[66] GC Exh. 34, item 52

In **Steelworkers Local 9292,** supra. the Board held that in the event Section 7 rights of the employees, with their respective employers, which this is not the case because the Charging Parties were not exercising any Section 7 rights in relation to their respective employers, then a balancing text has to be done. In this regard even assuming that Section7 rights of the Charging Parties were affected the balancing text shows that the Union's determination to impose the sanctions outweighs the purported Section 7 rights. Here the Union imposed the disciplinary actions against stewards that jeopardize the financial stability of the Union by engaging in acts CC1 understood violated the Broad Order. Of such significance and importance is said Broad Order that the steward committee at least on two different occasions read it to the employees, and the Union, at its stewards council meetings discussed it with the stewards. Had there been a violation of the Broad Order, by acts of violence or other similar prohibited conduct, the Union would most likely have been placed in trusteeship as a result of the heavy fines. To say that the Union does not have a legitimate reason to assure compliance with the Broad Order and to impose sanctions on the stewards that may have violated it, is sending a wrong message to the Union's stewards, officers and members. The message being sent and of which the Union would not have any control off, is that Union stewards can do as they please during strikes of other employers than their own, when the Union has not approved the strike, and that any misconduct will not be binding on the Union under the Broad Order or the Act. Respondent Union submits that if the Board were to find that the Union could not impose sanctions on Union Stewards under these circumstances, in essence, it would modify the Broad Order.

The Board has also refused to examine the reasonableness of otherwise legally imposed union fines. The Supreme Court has held that inquiry by the Board into the multiplicity of factors bearing on the reasonableness issue would necessarily lead the Board to substantial involvement in strictly internal union affairs. **NLRB v. Boeing Co.,** 412 U.S. 67, 74 (1973).

As detailed on the March 10 letter to the Charging Parties there were ten factors the Union took in consideration for imposing the sanctions, some more serious than other. Among them the fact that they were stewards with full knowledge of the By Laws, Constitution and the Broad Order and that their actions may have placed at risk Local 901 of violating said Broad Order, causing Local 901 to go on trusteeship had any violence occurred during the strike, as the Employer is alleging. In this regard, it is submitted that Local 901 has a legitimate right, and it is so ordered by the Broad Order, to initiate internal union charges whenever it understands the Broad Order has been violated.[67] As, the employees failed to present any defense, the evidence at the hearing held by the Union, as described by the affidavits, witnesses and documentary evidence, was conclusive as to their participation and involvement in the events that culminated in the disciplinary actions. Based on the un-rebutted evidence at the hearing held by the Union it had no other alternative than to find that the employees violated the Union's By Laws, the International Constitution and the Broad Order. Local 901 cannot be left in a limbo waiting for an employer to file charges against it for violating the Broad Order, to take action against its stewards.[68]

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[67] J Exh 10 Section (q). See also page 16 of this Brief

[68] Exception Number IX.

B. The Strike was Unlawful

The evidence clearly shows that the determination to strike on October 20, 2008 was made by the steward committee and that one of the purpose for the strike was to have the Employer sit with said committee to bargain. However, by the time this occurred the five individuals had been terminated; the Union had obtained from the Employer an offer of reinstatement for at least three of the discharged employees; the Union had made a meeting to select a new bargaining committee; and, in fact resume negotiations with the Employer.[69] In these regard, please note that the ALJ found that at least four of the five stewards that had been fired on October 10, were correctly terminated by Respondent Employer. Thus, it is evident that the strike request to force the Employer to bargain with them was unlawful, as its purpose was to bargain with a minority union.

The Board and courts have held that minority strikes without the authorization of the majority representative are unprotected as the Employer is required to bargain solely with the exclusive representative. **Confectionery & Tobacco Drivers Local 805 V NLRB,** 312 F. 2d 108 (2d Cir. 1963; **Plasti-Line, Inc. v NLRB,** 278 F 2d 482 (6 Cir. 1960); **NLRB v. Draper Corp.,** 145 F 2d 199 (4th Cir.1944); **Western Cartridge Co. v NLRB,** 139 F.2d 855 (7th Cir. 1943); **Copperweld Steel Co.,** 75 NLRB 188 (1947). Although the Union did not eliminate the possibility of a strike and was taking steps in the event it became necessary, it did not call the strike. As a matter of fact the strike did not comply with the provisions of the Broad Order, thus making it also unlawful. To find otherwise, will mean that similar actions in other union shops will terminate in

[69] OT page 280

circumventing the purpose of the Broad Order. In this regard, the Broad Order specifically provides for a series of steps to be taken before a strike begins and during the strike.[70] Moreover the strike was never approved by the Executive Board as required by the By Laws. Although, the Union was taking all necessary steps to go on strike if need be, by requesting a strike vote from the employees and requesting strike benefits funds from the International, the final say as to when the strike should start rests with the Executive Board, something that was not done.

The steward committee was advised by Union President, Alexis Rodriguez that their actions were dividing the membership. Nevertheless, they continued on the own and with the support of the Charging Parties and other disgruntle members. The results of said actions was that on October 22 another labor organization seize on the opportunity and filed a petition to represent the unit employees.

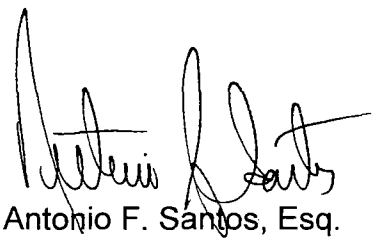
Moreover, the strike was also unlawful because it was in support of the terminated shop stewards whom, as discussed previously, were correctly terminated by the Employer, and constituted themselves in a minority union trying to force the Employer to bargain with them.

Consequently, Local 901 submits that the October 20-22 strike was unlawful, and as result, the disciplinary actions taken against the three stewards by the Union were based on valid Union considerations to its internal management of the union affairs.

WHREFORE, Unión de Tronquistas de Puerto Rico, Local 901, IBT, respectfully request the Honorable National Labor Relations Board to dismiss the Second Consolidate Amended Complaint in it's entirely, and award Local 901 its costs, attorney's fees and any additional relief as it may deem appropriate.

[70] Joint Exh. 10 items k to q.

Respectfully submitted, this June 10, 2010.



Antonio F. Santos, Esq.

CERTIFICATE OF SERVICE

I hereby certify that the "BRIEF OF UNIÓN DE TRONQUISTAS, LOCAL 901, IBT IN SUPPORT OF EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE DECISION" has been sent via UPS to the parties below, except José Adrián López-Pacheco and Miguel A. Colón-Torres who have been served via Certified Mail:

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Antonio F. Santos

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